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THEON D. JONES, Appellant)	
)	
and)	Docket No. 05-1001
)	Issued: September 16, 2005
U.S. POSTAL SERVICE, POST OFFICE,)	
St. Louis, MO, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

On September 29, 2003 appellant, then a 33-year-old clerk, filed an occupational injury claim alleging that she sustained an emotional condition as a result of incidents of her federal employment. She indicated that she first became aware of her condition on August 23, 2000 and first realized the condition was caused by her employment on July 3, 2001. Appellant alleged

that her depression resulted from the denial of a claim for recurrence of disability related to a 1999 traumatic injury claim.

In support of her claim, appellant submitted notes dated July 3, 2001 from the employing establishment's health unit reflecting that appellant was under stress on that date; a memorandum dated June 20, 2003 notifying appellant that she had been placed on "off-duty" status for reported threats involving a revolver; and a July 8, 2003 letter from Dr. Shazia Malik, indicating that he had been treating appellant since August 2, 2001 for major depression that he attributed to her work environment.

On October 27, 2003 the Office notified appellant that the information she had submitted was insufficient to establish her claim and requested that she identify specific work stressors that allegedly caused her condition, including dates, incidents and witnesses to support the allegations.

In response to the Office's request, appellant submitted a letter dated July 31, 2003 from Dr. Malik stating that she did not have homicidal or suicidal ideation and was not harmful to herself or others.

In a narrative statement supporting her claim, appellant described events and circumstances at work that allegedly contributed to her emotional condition. She claimed that she had been sexually harassed and that the employing establishment had discriminated against her and committed error or abuse in certain administrative or personnel matters. While it is not practical for the purposes of this decision to repeat the details of all the incidents appellant described, appellant identified the following as noteworthy and representative of the kind of treatment she received: (1) She alleged that her manager, Louis Meads, asked her if she would allow him to "suck her vagina" and told her that he would make her "scream with pleasure," and that he later propositioned her in a night club, offering her money if she would allow him to "suck her vagina" and indicating that he would pay her \$100.00 "if it did n[o]t feel good." (2) She stated that she accepted an invitation from supervisor Larry Pate to perform massage therapy and that, while massaging her lower back and left leg, his hand "ran up [her] left leg up to [her] vagina." She also alleged that Mr. Pate later offered her money not to disclose the details of the experience with supervisors or coworkers. (3) She alleged that supervisor Hollensbeck did not like her, picked on her for frivolous things, talked to her in a disrespectful tone and improperly issued her a letter of warning on failure to follow instructions because she greeted another employee by shouting "hello." (4) She alleged that claims examiner Rob Kicielinski had no interest in handling her 1999 claim and "made humor of her injury" in a March 29, 2000 email, wherein he indicated that he was the "lucky one" who had been assigned to appellant's case. (5) She claimed that meeting timely dispatches contributed to her illness and that when she complained of severe pain in her back and legs as a result of pushing heavy equipment to the elevators for "dispatchment," supervisor Williams responded by saying that "something always hurts" and that she should have stayed home. Appellant indicated that Ms. Williams' comments made her feel less appreciated as an employee. (6) She contended that she was unfairly placed on emergency leave for preparing an alleged "hit list," and that the mental hospital had violated her right to privacy by notifying her employer of the alleged threats. (7) She alleged that her chronic lower back and leg pain contributed to her stress. (8) She stated that she had been approved for social security disability due to her depression.

Appellant submitted a letter dated November 25, 2003 in which Dr. Malik stated that she had returned to work on September 9, 2001 after having been hospitalized for a “mood episode.” He reported that appellant was upset because she was not being paid by workers’ compensation and that a series of work-related events had precipitated her illness.

In a memorandum dated December 4, 2003, Mr. Kicielinski denied ridiculing appellant’s injury via a March 29, 2000 email communication, indicating that his statement that he was “the lucky one” was a reference to his heavy workload.

By decision dated December 8, 2003, the office denied appellant’s claim, finding that she had failed to establish that she had sustained an injury.

On December 8, 2003 appellant requested an oral hearing. In support of her request, appellant submitted a statement in which she stated that she could not understand why her claim had been denied; that she had provided details of incidents of sexual harassment, gender discrimination and exposure to rude, crude and repulsive management behavior; and that the officials evaluating her claim were “evil.” Appellant also submitted reports dated January 13 and February 3, 2004 from Dr. Andrew M. Wayne, a Board-certified psychiatrist, documenting lower back and lower extremity pain allegedly due to a 1999 work-related injury; progress notes from Central Dermatology from August 20 through December 15, 2003; a letter from her mother dated November 2, 2003 reflecting her belief that appellant’s depression was due to job-related issues; a September 3, 2003 pathology report; and a copy of a March 29, 2000 email from Mr. Kicielinski to Pam Psokolow regarding appellant’s 1999 claim. Appellant also submitted a witness statement from an acquaintance, April Martin, wherein she alleged that appellant told her that her supervisor, Mr. Meads, made sexual advances towards her on numerous occasions and accused her of “going crazy” and saying that she was planning to go on a killing spree at the post office.

At the September 28, 2004 hearing, appellant testified that she was “emotional” as a result of the denial of her claim for recurrence of disability in June 2000. She alleged that she had been sexually harassed by supervisor Meads in 1997 or 1999 and by Mr. Pate in 2002, but that she had never reported the harassment or filed a complaint against either supervisor because she “was afraid to.” Appellant stated that the only witness statement she could provide was from a friend, Ms. Martin.

In an April 14, 2004 psychological report, Dr. Stuart J. Ozar, a Board-certified psychiatrist, opined that appellant was not fit for duty. He also indicated that she had no desire to return to work at the employing establishment.

By decision dated December 20, 2004, the hearing representative denied appellant’s claim, finding that the evidence failed to establish a compensable work factor.

LEGAL PRECEDENT

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the

concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.²

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.³ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁴

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁵ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁶

ANALYSIS

In her October 7, 2003 occupational disease claim, appellant alleged that she had sustained an emotional condition as a result the Office's denial of her claim for recurrence of disability related to a 1999 traumatic injury claim. A copy of her claim form was provided to the employing establishment on October 27, 2003, along with a letter requesting a response to appellant's allegations. In a supplemental narrative statement dated November 13, 2003, appellant made numerous allegations against the employing establishment, including claims of discrimination and sexual harassment. However, other than one memorandum dated December 4, 2003 from Mr. Kicielinski denying that he ridiculed appellant's injury, the record

¹ 5 U.S.C. §§ 8101-8193.

² See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); see also *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Lori A. Facey*, 55 ECAB ____ (Docket No. 03-2015, issued January 6, 2004). See also *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁴ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁵ See *Lori A. Facey*, *supra* note 3. See also *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

⁶ *Id.*

does not contain a response by the employing establishment to appellant's allegations. Moreover, there is no evidence in the record indicating that a copy of appellant's November 13, 2003 statement was provided to the employing establishment.

The Board finds that this case is not in posture for a decision on the grounds that the employing establishment has not responded, nor has it been given the opportunity to respond, to the specific allegations made by appellant in her November 13, 2003 narrative statement. A response from the employing establishment is necessary in order to properly determine whether or not appellant has alleged compensable employment factors. The Office shall provide the employing establishment with a copy of and seek a detailed response to appellant's November 13, 2003 statement. Thereafter, the Office shall render a *de novo* decision in light of the employing establishment's response.

CONCLUSION

The Board finds that this case is not in posture for a decision on the grounds that the employing establishment has not responded nor has it been given the opportunity to respond to allegations made by appellant that may constitute compensable factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 20, 2004 is set aside and this case is remanded to the Office for action consistent with the provisions of this order.

Issued: September 16, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board